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Laws

Act

2018-11-23

The Microfinance Act, 2018

Tanzania, United Republic

Ministry of Finance and Planning

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THE UNITED REPUBLIC OF TANZANIA

No. 10

23rd November, 2018

ACT SUPPLEMENT

to the Gazette of the United Republic of Tanzania No. 47 Vol 99 dated 23rd November, 2018

Printed by the Government Printer, Dodomaby Order of Government

THE MICROFINANCE ACT, 2018

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THE UNITED REPUBLIC OF TANZANIA



NO. 10 OF 2018

I ASSENT

JOHN POMBE JOSEPH MAGUFULI
President[21st November, 2018]

An Act to provide for the licensing, regulation and supervision of microfinance business; and to make provisions for related matters.

ENACTED by Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

Short title and commencement

1. This Act may be cited as the Microfinance Act, 2018 and shall come into operation on such date as the Minister may, by notice published in the *Gazette*, appoint.

Application

2. This Act shall apply to Mainland Tanzania.

Interpretation

3. In this Act, unless the context otherwise requires-

“Bank” means the Bank of Tanzania;

“Community microfinance group” means group collectively formed and managed by members and registered under this Act to undertake microfinance business including mobilization of savings from its members and provision of loans to its members but does not include:-

(a) community self help groups formed for safety-net purposes and socio-economic welfare of members and which do not receive savings and provide loans to its members for the purpose of undertaking microfinance business;

(b) special interest groups, clubs and associations collecting financial contributions from members or receiving charity donation formed and registered under the Societies Act for enhancement of their economic social welfare but does not undertake microfinance business; and

(c) groups occasionally formed for the purpose of receiving donations or fund raising for religion purposes or social events including marriages or other customary family related affairs by individuals or groups;

Cap.337

“credit company” means a company duly incorporated under the Companies Act and licensed to undertake microfinance business under this Act;

Cap. 212

“credit reference bureau” means an entity specialized in collecting and sale of credit performance information for individuals and entities.

“Commission” means the Tanzania Cooperative Development Commission established under the Cooperative Societies Act;

Cap. 211

“commodity microfinance” means the undertaking of microfinance business in the form of commodity;

“consumer” means a client or member of a microfinance service provider who acquires or intends to acquire the services of the microfinance service provider;

“Delegated Authority” means a public institution delegated by the Bank the mandate to execute the functions and powers of the Bank under this Act;

“entity” means a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organisation or any other form of undertaking that is not specifically listed herein but that is commonly recognised as an entity; and, includes any Government or government agency or institution;

“financial organisation” means an organisation duly incorporated or registered under relevant laws and which is licensed to undertake microfinance business in accordance with this Act;

“foreign owned microfinance service provider” means a microfinance service provider incorporated in Tanzania and whose majority owners or shareholders are foreigners;

“individual money lender” means a person licensed to undertake microfinance business of lending money to individuals in accordance with the provisions of this Act;

“microfinance business” means the deposit and non-deposit taking business and includes the activities stipulated under section 4;

“micro leasing” means finance leasing operations where the average value of the asset in the portfolio is up to ten million Tanzanian shillings and the leasing term does not exceed twenty four months;

- “microloan” means a loan provided to small enterprises, household and individuals as determined in the regulations;
- Cap 394 “micro insurance” has the meaning ascribed to it under the Insurance Act;
- “microfinance service provider” means an entity or a person registered or licenced to undertake microfinance business under this Act including deposit and non-deposit taking microfinance service providers as classified under section 5;
- “Minister” means the Minister responsible for finance;
- Cap. 423 “money laundering” has the meaning ascribed to it under the Anti Money Laundering Act;
- “place of business” means a branch, office, agency or mobile unit of a microfinance service provider open to the public;
- “Register” means a register of microfinance service providers referred to under section 54;
- Cap 211 “SACCOS” has the meaning ascribed to it under the Cooperative Societies Act.

PART II MICROFINANCE SERVICE PROVIDERS

Microfinance
business

- 4.-(1)** The microfinance business shall be undertaken by microfinance service providers which are -
- (a) established in terms of their respective laws and recognized under this Act; and
 - (b) established and recognized under this Act.
- (2) The microfinance service providers under subsection (1) shall undertake microfinance business in accordance with the provisions of this Act.
- (3) Without prejudice to the generality of subsection (2), the microfinance business undertaken under this Act shall include-

- (a) receiving money, by way of deposits or interest on deposits or borrowing and which is lent to members or clients;
- (b) accepting savings and providing loans or other credit facilities to micro or small enterprises and low income households or individuals;
- (c) providing micro credit, micro savings, micro-insurance, micro-leasing, micro-pension and micro-housing finance;
- (d) transfer and payment services, including digital microfinance services;
- (e) undertaking commodity microfinance business including provision of commodity loans;
- (f) providing financial education; and
- (g) any other related service as may be prescribed in the regulations.

Categorization
of microfinance
service
providers

5.-(1) For the purpose of this Act, there shall be four tiers of microfinance service providers as follows:

- (a) Tier 1, shall comprise of deposit taking microfinance service institutions;
- (b) Tier 2, shall comprise of non-deposit taking microfinance service providers such as individual money lenders;
- (c) Tier 3, shall comprise of SACCOS; and
- (d) Tier 4 shall comprise of community microfinance groups.

Cap. 342 (2) Deposit taking microfinance institutions under sub-clause 1(a) shall be regulated in accordance with the Banking and Financial Institutions Act.

Place of
business

6.-(1) Each microfinance service provider shall have a place or places of business with proper address for carrying out its microfinance business.

- (2) Subject to this section, a microfinance service

provider shall not open or close a place of business without the prior approval of the Bank or Delegated Authority.

(3) A microfinance service provider which fails to comply with the requirements of this section, commits an offence.

Governance of
microfinance
service
providers

7.-(1) The governance of the microfinance service providers shall be as provided for in their respective establishing laws or constitutions.

(2) Notwithstanding subsection (1), the Bank or Delegated Authority may, if it is satisfied that the operations of a microfinance service provider is not in compatible with microfinance business, issue general or specific directives to the microfinance service provider regarding its operations and such directives shall be complied.

Accountability
of microfinance
service
providers

8. A microfinance service provider shall, for the purposes of undertaking microfinance business, be accountable to the Bank, Delegated Authority or any other authority in accordance with the applicable laws.

Minimum
capital
requirements

9. A microfinance service provider who undertakes microfinance business under this Act shall comply with the minimum capital requirements prescribed in the regulations.

Minimum
liquid assets

10.-(1) A microfinance service provider shall maintain such minimum holding of liquid assets as may be prescribed in the regulations.

(2) For the purposes of this section, “liquid assets” means-

- (a) notes and coins which are legal tender in the United Republic;

- (b) balances held at banks or microfinance service providers;
- (c) treasury bills and bonds which are freely marketable and re-discountable at the Bank; or
- (d) such other assets as the Bank or Delegated Authority may specify.

Transformation
of microfinance
service
providers

11.-(1) Any microfinance service provider may, upon application and attaining the required criteria prescribed in the regulations, transform from its respective Tier to another Tier.

(2) Where a microfinance service provider transforms to another tier, such microfinance service provider shall be regulated in accordance with the laws governing the respective tier and this Act.

(3) For the purposes of this section, the criteria for transformation of a microfinance service provider shall include-

- (a) minimum capital requirement for transformation;
- (b) number of members and customers that qualifies for transformation;
- (c) nature of microfinance service business that may transform; and
- (d) any other relevant criteria prescribed in the regulations.

(4) Notwithstanding the provisions of this section, the Bank may, prior to directing transformation of microfinance service provider, conduct an assessment regarding sustainability of microfinance service provider after transformation.

(5) Where upon assessment, the Bank is satisfied that a microfinance service provider meets the criteria for transformation, it may direct transformation of such microfinance service provider upon such terms and

conditions as may be prescribed by the Bank.

(6) Where a microfinance service provider without reasonable cause, fails to comply with the directive issued under sub section (5), the Bank shall take such measures as may be appropriate to ensure compliance.

PART III ADMINISTRATIVE PROVISIONS

Functions of
Bank

12.-(1) The Bank shall be responsible to oversee and monitor microfinance service providers operating or undertaking microfinance business in terms of this Act.

(2) Subject to subsection (1) the functions of the Bank shall be to regulate and supervise the operations of microfinance business in accordance with this Act and other relevant laws.

(3) Without prejudice to the generality of sub sections (1) and (2), the Bank shall in particular-

- (a) issue licence to qualified microfinance service providers in accordance with this Act;
- (b) advise and report to the Minister on matters relating to microfinance business;
- (c) develop and manage database for microfinance service providers;
- (d) inspect, monitor and evaluate the performance of microfinance business;
- (e) issue circulars and guidelines for microfinance services providers;
- (f) assess and issue approvals for transformation of microfinance service providers;
- (g) ensure proper management of complaints relating to microfinance business;
- (h) ensure protection of consumers of microfinance service providers including

sanctioning usurious lending practices;

- (i) ensure that credit information relating to microfinance business are collected, disseminated and shared; and
- (j) perform such other functions as may be required for proper regulation and supervision of microfinance business.

Powers of
Bank

13. In the performance of its functions under this Act, the Bank shall have power to-

- (a) investigate or inquire into the operations of microfinance service providers;
- (b) inspect and examine books of accounts, records, returns and any other document of microfinance service providers;
- (c) demand for information related to the activities of microfinance service providers;
- (d) instruct on the proper management of microfinance service providers;
- (e) enter at any reasonable time, into any premises of a microfinance service provider or any premises in which it is believed, on reasonable grounds, that books of accounts, records or documents in any form relating to the microfinance service provider's business are kept;
- (f) open or cause to be opened any strong room, safe or other container in which it is suspected, on reasonable grounds, that there are any securities, books of accounts, records or documents of a microfinance service provider;
- (g) require any officer, employee or agent of a microfinance service provider to explain or furnish information or documents concerning

- the microfinance service provider's management or activities; and
- (h) exercise such powers as may be necessary for the better performance of its functions under this Act.

Delegation of powers and functions of Bank

14.-(1) For the better carrying out of its regulatory and supervisory functions and powers under this Act and subject to such conditions and procedures as the Bank may specifically prescribe, the Bank may, by notice published in the *Gazette*, delegate any of its functions or powers:

- (a) in the case of functions and powers relating to microfinance service providers in Tier 3, to the Commission; and
- (b) in the case of functions and powers relating to microfinance service providers in Tier 4, to the local government authorities.

(2) A Delegated Authority under sub section (1) shall exercise such functions and powers in accordance with the conditions, procedures and any other directives issued by the Bank from time to time.

(3) Any power or function delegated under this section, when exercised or performed by a delegated authority, shall be deemed to have been exercised or performed by the Bank.

(4) No delegation made under this section shall prevent the Bank from performing or exercising the powers and functions so delegated.

(5) Notwithstanding subsection (1), unless otherwise approved by the Minister, the Bank shall not delegate its functions and powers relating to regulation and supervision of microfinance service providers in Tier 2.

Caps 287 and
288

(6) For the purposes of this section, the term “local government authority” has the meaning ascribed to it under the Local Government (District Authorities) Act and the Local Government (Urban Authorities) Act.

Role of
Minister

15.-(1) The Minister shall, for the purpose of ensuring conducive policy environment for the microfinance business, formulate policy matters and supervise implementation of microfinance policy.

(2) For the purpose of sub-section (1), the Minister shall-

- (a) enhance enabling environment to support microfinance business;
- (b) ensure sustainability of microfinance business;
- (c) issue directives to the Bank on the implementation of the policy relating to microfinance business;
- (d) ensure promotion of microfinance business, transparency and accountability; and
- (e) perform any other role for better carrying out of the provisions of this Act.

(3) In performing his role under this Act, the Minister may, after consultation with relevant Ministers, require or demand information or documents relating to microfinance business from Ministries, institutions or office and such Ministry, institutions or office shall be obliged to comply.

(4) The Minister may, in consultation with the Minister responsible for cooperatives or, as the case may be, the Minister responsible for local government authorities, make regulations for the better carrying out of his roles under this Act.

PART IV
LICENSING OF MICROFINANCE SERVICE PROVIDERS
UNDER TIERS 2 AND 3

Prohibition of
unlicensed
microfinance
business

16.-(1) Without prejudice to the provisions of section 28 of this Act, a person shall not carry out any microfinance business, unless such person is licensed in accordance with the provisions of this Act.

(2) Any person who contravenes provisions of this section commits an offence and shall, upon conviction-

- (a) in the case of the tier 2, be liable to a fine of not less than twenty million shillings but not exceeding one hundred million shillings or to imprisonment for a term of not less than two years but not exceeding five years or to both;
- (b) in the case of the tier 3, be liable to a fine of not less than ten million shillings but not exceeding fifty million shillings or to imprisonment for a term of not less than two years but not exceeding five years or to both.
- (c) In the case of the tier 3, be liable to a fine not less than ten million shillings or to imprisonment for a term of not less than two years but not exceeding five years or to both.

Application for
licence under
Tier 2

17.-(1) A person who desires to undertake microfinance business under Tier 2 shall apply to the Bank for a license in a manner as prescribed in the regulations.

(2) An application for a licence in respect of Tier 2 shall be submitted to the Bank in the prescribed form as set out in the regulations and shall contain the particulars of the applicant, the microfinance business involved, location or place of business and such other particulars as may be required for that purpose.

(3) The application under subsection (1) shall be accompanied with-

- (a) a certified copy of a certificate of registration or incorporation issued in terms of a relevant law;
- (b) a prescribed nonrefundable application fee; and
- (c) such other information or documents as the Bank may require for the purpose of the application.

(4) The Bank shall make regulations prescribing procedures for application for licence and other matters relating to individual money lenders.

Application for
licence under
Tier 3

18.-(1) A person who intends to undertake microfinance business under Tier 3 shall apply to the Bank or Delegated Authority for a licence in a manner as prescribed in the regulations.

(2) An application for a licence under Tier 3 shall be submitted to the Bank or Delegated Authority in the prescribed form and shall be accompanied with-

- (a) a certified copy of certificate of registration issued in terms of Cooperative Societies Act;
- (b) a prescribed nonrefundable application fee; and
- (c) such other information or documents as the Bank or Delegated Authority may require for the purpose of the application for licensing.

Cap. 211

Licensing of
foreign
microfinance
service provider

19. A foreign owned microfinance service provider which desires to undertake microfinance business shall submit an application for a licence to the Bank.

(2) Procedures for application under subsection (1) shall be prescribed in the regulations.

(3) Where a foreign owned microfinance service provider undertakes microfinance business in Tanzania, such microfinance service provider shall comply with applicable laws in local content including employment and training of Tanzanians.

Consideration
of application

20. Upon receipt of an application under this Act, the Bank or Delegated Authority may, within the period prescribed in the regulations, consider the application to ascertain its compliance with the prescribed requirements.

Issuance of
licence

21. Where the Bank or Delegated Authority is satisfied that an applicant has met all requirements for license under this Act, the Bank or Delegated Authority shall-

- (a) issue the license to the applicant upon such terms and conditions as the Bank or Delegated Authority may consider necessary; and
- (b) register the licensed microfinance service provider in the register.

Validity of
licence

22. A license issued under this Act shall have effect from the date it is issued and shall be valid unless revoked by the Bank or Delegated Authority.

Refusal to issue
license

23.-(1) The Bank or Delegated Authority may refuse to issue a licence where-

- (a) the applicant has failed to meet prescribed terms and conditions for licensing; or

(b) the applicant has provided false or misleading information;

(2) Where the Bank or Delegated Authority has refused to issue a licence, it shall within seven days from the date of its decision, notify the applicant in writing stating the reasons for such refusal.

Re-application
and appeal

24.-(1) An applicant whose application has been refused may reapply, if the deficiencies that formed the basis for refusal of the initial application or subsequent review have been corrected or otherwise addressed.

(2) The applicant who is aggrieved by the decision of the Bank or Delegated Authority under sub section (1) may, within twenty one days from the date of such decision-

(a) in the case of the Delegated Authority, appeal to the Bank; or

(b) in the case of the Bank, appeal to the Minister.

(3) A person who is aggrieved by the decision of the Minister under this section, may seek further redress in a court of competent jurisdiction.

Revocation of
licence

25.-(1) The Bank or Delegated Authority may, by notice to the microfinance service provider, revoke a licence where the microfinance service provider:-

(a) ceases to carry on microfinance business;

(b) violates the terms and conditions prescribed in the licence;

(c) is wound up, liquidated or otherwise dissolved;

(d) is deregistered under a relevant law; or

(e) has contravened the provisions of this Act.

(2) The Bank or Delegated Authority shall, within fourteen days of the revocation, cause a name of a microfinance service provider whose licence has been

revoked to be published in the *Gazette* and in the newspaper of wide public circulation.

Procedure for
revocation of
licence

26.-(1) Where a microfinance service provider is in default of the terms and conditions in respect of which a licence was issued, the Bank or Delegated Authority may serve on the microfinance service provider a default notice in writing specifying the nature of the default and the time within which the default has to be rectified.

(2) Upon receipt of the default notice the holder shall make representation in writing to the Bank or Delegated authority regarding remedy or rectification of default.

(3) Where the Microfinance service provider fails to remedy or rectify the default within the time specified in the default notice or has not made a representation satisfactory to the Bank or Delegated Authority, the Bank or Delegated Authority shall revoke the licence issued and notify in writing the microfinance service provider accordingly.

(4) The microfinance service provider aggrieved by the decision of the Bank or Delegated Authority to revoke the licence, may-

(a) in the case of a decision made by the Bank appeal to the Minister; and

(b) in the case of a decision made by Delegated Authority appeal to the Bank.

(5) A person who is aggrieved by the decision of the Minister under this section, may seek further redress in a court of competent jurisdiction.

Effect of
revocation of
licence

27.-(1) Where a licence of the microfinance service provider is revoked in terms of this Act, the Bank or Delegated Authority shall cause to be removed the name of the microfinance service provider from the

register and shall in writing, direct such microfinance service provider-

- (a) to stop its operations with effect from the date of revocation; and
- (b) to manage and resolve within the time as may be prescribed all issues relating to assets and liabilities regarding its consumers or members.

(2) Where a microfinance service provider fails to comply with the directives issued under subsection (1), the Bank shall have powers to take such measures as may be appropriate to ensure protection of rights of consumers or members.

PART V
REGISTRATION OF MICROFINANCE SERVICE
PROVIDERS UNDER TIER 4

Registration of
microfinance
service
providers under
Tier 4

28.-(1) A person who intend to undertake microfinance business under Tier 4 shall apply for registration to the Bank or Delegated Authority in the manner as may be prescribed in the regulations.

(2) An application for registration shall be made to the Bank or Delegated Authority in the prescribed form and shall be accompanied with:

- (a) two copies of the constitution duly signed by all members of the applicant;
- (b) members' resolution to form and register a microfinance entity duly signed by all members;
- (c) proposed organizational structure and names of proposed leaders of the applicant;
- (d) a letter of reference from the ward or village authority introducing the applicant; and
- (e) any other documents or information as the

Bank or Delegated Authority may require.

Refusal of
registration
under Tier 4

29.-(1) Subject to section 28 of this Act, the Bank or Delegated Authority may refuse to register an applicant if the applicant has-

- (a) failed to meet prescribed requirements for registration; or
- (b) provided false or misleading information.

(2) Where the Bank or Delegated Authority refuses to register the applicant under this section, it shall within seven days from the date of its decision, notify the applicant in writing stating the reasons for such refusal.

(3) An applicant whose application has been refused pursuant to this section may submit fresh application based on the reasons of refusal and such application shall be treated as a new application and shall be subjected to the same process.

(4) A person who is aggrieved by a decision under this section may-

- (a) in the case of a decision made by a Delegated Authority, appeal to the Bank; and
- (b) in the case of decision made by the Bank, appeal to the Minister.

Certificate of
registration

30.-(1) The Bank or Delegated Authority shall, upon registration of a microfinance service provider under Tier 4 issue to such provider a certificate of registration.

(2) The certificate of registration issued under subsection (1) shall contain-

- (a) the name and address of the microfinance service provider;
- (b) the date and validity of registration;
- (c) the area of operation or place of business of the microfinance service provider; and

(d) such terms and conditions as may be required.

Effect of
registration

31.-(1) A certificate of registration shall be a conclusive evidence of the microfinance service provider to operate or undertake microfinance business in terms of its constitution and this Act.

(2) A registered microfinance service provider shall by virtue of its registration be a body corporate capable in its name of-

- (a) suing and being sued;
- (b) acquiring purchasing or otherwise disposing of any property, movable or immovable;
- (c) entering into contract; and
- (d) performing all acts which can be done by a body corporate and which are necessary for the proper performance of its duties and functions.

(3) A person who undertakes the microfinance business under Tier 4 without being registered in accordance with this Act, commits an offence.

Cancellation of
certificate of
registration

32.-(1) The Bank or Delegated Authority may cancel a certificate of registration if it is satisfied that:

- (a) the terms or conditions prescribed in the certificate have been violated;
- (b) the microfinance service provider has ceased to operate; and
- (c) the microfinance service provider operates contrary to this Act or other relevant laws.

(2) Where a certificate of registration has been cancelled, the Bank or Delegated Authority shall-

- (a) notify the relevant microfinance service provider in writing stating the reasons for cancellation;
- (b) order such microfinance service provider to stop its operations; and

(c) remove the name of such microfinance service provider from the register.

(3) The provisions of section 26 relating to procedures for revocation of licence shall apply *mutatis mutandis* to cancellation of certificate of registration issued under this Act.

Promotion and empowerment of microfinance service providers

33.-(1) For the purpose of promoting the growth and sustainability of Microfinance Service Provider under Tier 4, the Bank shall, in collaboration with the Council-

- (a) provide financial education to members of microfinance service providers;
- (b) promote and intervene where necessary for the development of microfinance service providers;
- (c) protect interests and rights of members and beneficiaries of microfinance service providers;
- (d) provide support to microfinance service provider
- (e) through various government programmes;
- (f) perform such other functions for the purpose of promoting and empowering microfinance service providers under Tier 4.

(2) In this section, “Council” means the National Economic Empowerment Council established under the National Economic Empowerment Act.

PART VI MANAGEMENT AND SUPERVISION OF MICROFINANCE SERVICE PROVIDERS

(a) Management of Microfinance Service Providers

Management of
microfinance
business

34. Management of operations, finances and business of a microfinance service provider shall be vested in the microfinance service provider.

Management
and take-over

35.-(1) Without prejudice to section 34 and other relevant laws, the Bank or Delegated Authority may take over the management of the microfinance service provider where-

- (a) the Bank or Delegated Authority considers that a microfinance service provider is not-
 - (i) in a sound financial condition;
 - (ii) operating in accordance with sound administrative and accounting practices and procedures; and
 - (iii) adhering to proper risk-management policies;
- (b) a microfinance service provider fails to comply with the minimum capital requirements prescribed under this Act;
- (c) a microfinance service provider refuses to be inspected by the Bank or Delegated Authority as required by this Act;
- (d) a microfinance service provider's licence has been revoked;
- (e) the continuation of microfinance business is detrimental to the interests of microfinance clients; or
- (f) a microfinance service provider is undertaking microfinance business in a manner contrary to this Act.

(2) A party to a contract with a microfinance service provider shall not be relieved of his obligations on the ground that the microfinance service provider is under the management of the Bank or Delegated Authority.

(3) Costs of management of a microfinance

service provider during the period of take over shall not be borne by the Bank or Delegated Authority.

(4) The procedures for management and take-over of a microfinance service provider under this section shall be as stipulated in the regulations.

Prohibited and permissible activities

36.-(1) A microfinance service provider shall not engage in any prohibited activity under this Act or under any other written laws.

(2) The Bank shall, through regulations prescribe permissible and prohibited activities of microfinance service providers.

(3) Where a microfinance service provider without reasonable cause, fails to comply with the provisions of this section, the Bank or Delegated Authority shall take such measures as may be appropriate to ensure compliance.

Payment of dividends or interests

37.-(1) A microfinance service provider shall pay dividends on its shares to its shareholders or make any other form of distribution or payment of interest to its consumers or members in accordance with the provisions of this Act and other relevant laws.

(2) The payment of dividends, interest and other form of distribution under subsection (1) including the period for such payment shall be in the manner as prescribed in the constitution or other relevant documents of the microfinance service provider.

Books of accounts and other records

38. A microfinance service provider shall keep proper books of accounts and other records in relation to its operations which are sufficient to show and explain its transactions and financial position.

Preparation of
accounts

39.-(1) Every microfinance service provider shall, in each financial year, prepare accounts in accordance with the prescribed standards.

(2) The prescribed standards for preparation of accounts for microfinance service providers shall comply with national financial reporting standards.

(3) The accounts and other financial records of a microfinance service provider shall be denominated in Tanzania shillings and shall comply with the requirements of the applicable laws.

Audit of
accounts

40.-(1) The accounts of microfinance service provider except for microfinance service providers under Tier 4 shall be audited at least once in a year by an auditor in a manner provided for in the regulations.

(2) Notwithstanding provisions of sub section (1), the accounts and financial records of the microfinance service providers under Tier 4 shall be audited or monitored as prescribed in the regulations.

(3) Where the Bank or Delegated Authority is satisfied that the audited accounts of a microfinance service provider do not comply with the requirements of this Act or relevant regulations or contain information that may be misleading or are not published in the specified form, the Bank or Delegated Authority may require the service provider to-

(a) amend the audited accounts to comply with the Act;

(b) correct the misleading information;

(c) re-publish the amended audited accounts; and

(d) submit to the Bank or Delegated Authority further documents or information relating to any document or information.

(4) Where a microfinance service provider without reasonable cause, fails to comply with the provisions of

this section, the Bank or Delegated Authority shall take such measures as may be appropriate to ensure compliance.

Appointment of
internal auditor

41.-(1) A microfinance service provider shall appoint an internal auditor who holds such qualifications and experience as prescribed in the relevant regulations.

(2) Without prejudice to sub section (1), a microfinance service provider under Tier 4 shall appoint a person responsible for internal control of financial affairs of the service provider in a manner provided for in the regulations.

Disclosure of
financial
statements

42.-(1) A microfinance service provider shall disclose its financial statements to the Bank, Delegated Authority and other stakeholders in a manner as provided for in the regulations.

(2) Without prejudice to sub section (1), a microfinance service provider shall display, throughout the year and in a conspicuous place in its place of business, a copy of its current audited financial statements, a copy of the balance sheet and profit and loss account in such form and manner as the Bank or Delegated Authority may prescribe.

(3) Notwithstanding the provisions of sub section (1), the Bank or Delegated Authority may prescribe the manner in which the microfinance service providers in Tier 4 shall disclose their financial information.

(4) Where a microfinance service provider without reasonable cause, fails to comply with the provisions of this section, the Bank or Delegated Authority shall take such measures as may be appropriate to ensure compliance.

Sharing of
credit
information

43.-(1) A microfinance service provider shall share credit information in a manner provided for in the regulations.

(2) For the purpose of this section, credit information shall include any information including personal information and credit history of a borrower or person such as paying habit, outstanding debts and tax obligations and any other business details.

(3) Notwithstanding subsections (1) and (2), for the purpose of enabling sharing of credit information, a microfinance service provider under Tiers 2, 3 and 4 shall submit credit information to a credit reference bureau.

(4) A microfinance service provider may access and use credit information through the credit reference bureau in a manner provided for in the regulations.

(5) Without prejudice to the provisions of this section, the regulation of credit reference information shall be conducted in accordance with the Bank of Tanzania Act.

(6) Where a microfinance service provider without reasonable cause, fails to comply with the provisions of this section, the Bank or Delegated Authority shall take such measures as may be appropriate to ensure compliance.

(b) Supervision of Microfinance Service Providers

Submission of
periodic reports

44.-(1) A microfinance service provider shall submit to the Bank or Delegated Authority periodic reports of its microfinance business operations at such times and in such manner as may be prescribed in the regulations.

(2) Where a microfinance service provider without reasonable cause, fails to comply with the provisions of this section, the Bank or Delegated Authority shall take such measures as may be appropriate to ensure compliance.

Access to
information

45.-(1) The Bank or Delegated Authority shall have access to information relating to activities of any microfinance service provider and may request, in writing that information be furnished within the time prescribed in the request.

(2) Where a microfinance service provider without reasonable cause, fails to comply with the provisions of this section, the Bank or Delegated Authority shall take such measures as may be appropriate to ensure compliance.

Confidentiality

46.-(1) Where the Bank, Delegated Authority or a microfinance service provider has access to information obtained under this Act, such information shall be treated as confidential and shall not be disclosed to any person.

(2) Notwithstanding subsection (1), the Bank or Delegated Authority may disclose any information-

- (a) to an authorized agency or person where such information is needed and is to be used for supervisory or oversight purposes and that its confidentiality will be maintained; or
- (b) in compliance with the law, an order of the court or with the express consent of the consumer concerned.

Inspection of
microfinance
business

47.-(1) The Bank or Delegated Authority may, in such manner as may be provided for in the regulations, inspect any microfinance service provider.

(2) It shall be the duty of microfinance service

provider to produce before any officer authorised to make an inspection, all such books of account, records and other documents in custody or power of such person to furnish any statement or information relating to affairs of the microfinance service provider, as the inspecting authority may require within such time, as may be specified.

(3) Where the Bank or Delegated Authority, after considering the report of inspection under sub-section (1) is of the view that the affairs of any microfinance service provider are being conducted to the detriment of its consumers or contrary to this Act, it may after giving such opportunity to the microfinance service provider to make representation in connection with the report, take such action as it deems fit including-

- (a) restrict, suspend or prohibit the payment of dividends by the microfinance service provider;
- (b) suspend the licence for such period as the Bank or Delegated Authority may deem fit;
- (c) prohibit the conversion of any profits of the microfinance service provider into capital;
- (d) direct the microfinance service provider to take disciplinary action against any officer involved in such conduct;
- (e) direct the microfinance service provider to reconstitute its management;
- (f) order the microfinance service provider to submit to the Bank or Delegated Authority, within prescribed period-
 - (i) a capital restoration plan; or
 - (ii) a plan to resolve all deficiencies to the satisfaction of the Bank or Delegated Authority;
- (g) prohibit or suspend the microfinance service provider from awarding any bonuses, salary

increments and other benefits of senior management or officers of the microfinance service provider;

- (h) impose restrictions on growth of assets or liabilities of a microfinance service provider as it deems fit;
- (i) order a microfinance service provider to do or take such other actions as the Bank or Delegated Authority may deem necessary.

(4) Any person who obstructs an officer of the Bank or Delegated Authority or any other authorized person in the exercise of power conferred upon him by this section, or who neglects or refuses to produce book, record or anything which the officer of the Bank or Delegated Authority or any other authorized person may request to be produced for his inspection commits an offence.

Monitoring of
microfinance
business under
Tier 4

48.-(1) The Bank or Delegated Authority shall make or cause to be made a continuous monitoring of the business and affairs of the microfinance service providers under Tier 4 in accordance with the relevant regulations.

(2) Where upon monitoring made under sub section (1), the Bank or Delegated Authority finds out anomalies in the management of the business and affairs of the microfinance service provider, the Bank or Delegated Authority may-

- (a) advise or order the microfinance service provider to rectify the anomalies within the prescribed time; or
- (b) direct the microfinance service provider to take any other action for the purposes of ensuring compliance with the requirements of this Act;

(3) Where a microfinance service provider without reasonable cause, fails to comply with the order or

directive issued under sub section (2), the Bank or Delegated Authority shall take such measures as may be appropriate to ensure compliance.

Compliance
with Cap.423

49.-(1) A microfinance service provider shall, in compliance with the Anti-money Laundering Act, establish procedures for internal control for the purpose of identifying and reporting suspicious transactions.

(2) The Bank or Delegated Authority shall ensure each microfinance service provider operates in compliance with subsection (1).

PART VII MICROFINANCE CONSUMER PROTECTION

Consumer
protection
principles

50.-(1) A microfinance service providers shall comply with the principles of consumer protection as provided for in the applicable laws and in the regulations made under this Act.

(2) Subject to sub section (1), the principles of consumer protection prescribed in the regulations shall include-

- (a) terms and conditions of credit or related service that are transparent, fair, legible and protect the rights and interests of microfinance consumers or members;
- (b) complaints handling and dispute resolution mechanism;
- (c) full disclosure of relevant information on the products and services provided;
- (d) requirement for the vetting of the standard credit contracts or agreements; and
- (e) financial education to the consumers;
- (f) transparency on interest rates, fees or penalties; and

(g) any other principle for the purpose of ensuring fair treatment of consumers.

(3) For the purposes of this section.

“consumer protection” includes principles intended to ensure transparency of the products and services of the microfinance service provider, fair treatment and safeguard of the interests and rights of consumers and fair complaints handling and dispute resolution mechanism.

(4) Notwithstanding the provisions of sub sections (2) and (3), any term or condition stipulated in a contract or any relevant document purporting to grant to a microfinance service provider authority to unilaterally introduce or modify interest rate or any other loan condition shall be null and void.

(5) Where a microfinance service provider without reasonable cause, fails to comply with the provisions of this section, the Bank or Delegated Authority shall take such measures as may be appropriate to ensure compliance.

Debts collection
and recovery

51.-(1) A debt arising out of microfinance business activities under this Act shall be collected or recovered in a manner as may be prescribed in the regulations.

(2) Subject to subsection (1), the regulations issued under this section shall ensure that-

- (a) a debt collection measure is initiated by issuance of a sufficient written notice to the debtor;
- (b) the attachment of a debtor’s property or collateral security for purposes of sale to discharge a debt is applied as a last resort; and
- (c) a reasonable period is prescribed as a notice to debtor prior to sale or disposal of a debtor’s attached property.

(3) Where a microfinance service provider without reasonable cause, fails to comply with the provisions of this section, the Bank or Delegated Authority shall take such measures as may be appropriate to ensure compliance.

PART VIII
OFFENCES AND PENALTIES

General penalty

52. A person who contravenes any provision of this Act where no specific penalty is provided commits an offence and upon conviction shall-

- (a) in the case of Tier 2 and 3, be liable to a fine of not less than five million shillings and not exceeding twenty million shillings or to imprisonment for a term of not less than three months and not exceeding five years or to both; and
- (b) in the case of Tier 4, be liable to a fine of not less than one million shillings and not exceeding ten million shillings or to imprisonment for a term of not less than three months and not exceeding two years or to both.

Compounding
of offences

53.-(1) Notwithstanding the provision of this Act relating to penalties, where a person admits in writing that he has committed an offence under this Act, the Bank or Delegated Authority may, at any time prior to the commencement of the hearing by a court of competent jurisdiction, compound such offence and order such person to pay sum of money, not exceeding one half of the amount of the fine to which such person would otherwise have been liable to pay if he had been convicted of such offence.

- (2) Where an offence is compounded in

accordance with subsection (1) and proceedings are brought against the offender for the same offence, it shall be a good defense for the offender to prove to the satisfaction of the court that the offence with which the offender is charged has been compounded under subsection (1).

Cap. 20

(3) Where any person is aggrieved by any order under sub-section (1), he may within the prescribed period, appeal against such order to the High Court and the provisions of the Criminal Procedure Act shall apply to every such appeal as if it were an appeal against sentence passed by a district court in the exercise of its original jurisdiction.

(4) Where a person fails to comply with the order issued under this section within the prescribed period, the Bank or Delegated Authority:

- (a) shall, in addition to the sum ordered, require the person to pay an interest at the rate prescribed in the regulations; and
- (b) may enforce the order in the same manner as a decree of a court for the payment of the amount stated in the order.

PART IX GENERAL PROVISIONS

Register of
Microfinance
service
providers

54.-(1) The Bank or Delegated Authority shall cause to be kept and maintained a Register of all microfinance service providers licensed or registered in terms of this Act.

- (2) The Register shall contain-
 - (a) names and addresses of the microfinance service provider;
 - (b) particulars of licensing or registration including date of licensing or registration and

- number of certificate issued; and
- (c) such other particulars as may be determined by the Bank.

(3) The Bank or Delegated Authority may make any alteration or correction in relation to any change in the contents of the Register regarding particulars of registered microfinance service provider.

Publication of
microfinance
service
providers

55. The Bank shall, for the purpose of transparency and enhancement of public awareness, in every six months or in such intervals as the Bank may determine, publish in the *Gazette* and in any newspaper of wide circulation, the names and full addresses of microfinance service providers-

- (a) licenced or registered to undertake microfinance business under this Act;
- (b) whose licences or certificates of registration have been revoked; and
- (c) which by any reason have ceased to operate.

Protection for
acts done in
good faith
Cap. 16
Cap. 76

56. Without prejudice to the provisions of section 284A of the Penal Code and section 3 of the Public Officers (Recovery of Debts) Act, no act or thing done or omitted to be done by any officer or agent of the Bank or Delegated Authority shall, if done or omitted to be done in good faith in execution or purported execution of his duties under this Act shall subject that person to any action, liability or demand.

Transitional
provisions

57. A person who, before the commencement of this Act, was operating a microfinance business shall within twelve months of commencement of this Act apply for a license or registration in accordance with this Act.

Local content

58. Where a microfinance service provider

undertakes microfinance business, such microfinance service provider shall comply with applicable laws on local content including employment and training of Tanzanians.

Liability for
acts of bodies
of persons

59. Where an offence is committed under this Act by an association of persons, whether corporate or unincorporated and such association is found to have committed an offence with the knowledge or connivance of, or is attributable to any act or default on the part of any person or persons in apparent control of the association of persons, such person or persons shall be deemed to have committed the offence.

Regulations

60.-(1) The Bank may make regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of sub section(1), the Bank may make regulations prescribing-

- (a) procedures of application and forms to be used for licensing of microfinance service providers under Tier 2 and Tier 3;
- (b) requirements and procedures for formation, registration, and operation of microfinance service providers under Tier 4;
- (c) matters in respect of which the activities of microfinance service providers under Tier 4 shall be monitored;
- (d) inspection matters including appointment of inspectors or authorized officers to conduct inspection;
- (e) various fees payable under this Act;
- (f) principles for consumer protection including dispute handling procedures and provision of financial education;
- (g) the manner in which financial education shall

- be provided by microfinance service providers;
- (h) payments to be made and conditions to be complied with for members or clients applying for loans;
 - (i) conditions and manner in which dividends or other forms of profit shall be distributed to the members or clients;
 - (j) appointment and qualifications of the internal auditor or authorized person of the microfinance service provider;
 - (k) permissible and prohibited activities to be undertaken by microfinance service providers;
 - (l) submission, collection and sharing of information including credit information;
 - (m) criteria and procedures for transformation of microfinance service providers;
 - (n) various administrative measures for contravention of provisions of this Act;
 - (o) matters relating to commodity microfinance business undertaken under this Act;
 - (p) procedures for application of licence and matters relating to individual money lenders;
 - (q) conditions and manners for providing digital microfinance business; and
 - (r) any other matter that may be, or is required to be prescribed by the Bank under this Act.

(3) The regulations made under this section shall be published in the *Gazette*.

Disapplication
of certain
provisions to
Tier 4

61. The provisions of sections 6(2), 9, 10, 35, 39, 44, and 47 shall not apply to Tier 4.

PART X
CONSEQUENTIAL AMENDMENTS

(a) Sub Part I

AMENDMENT OF THE BANKING AND FINANCIAL
INSTITUTIONS ACT
(CAP.342)

Construction
Cap 342

62.-(1) This sub part shall read as one with the Banking and Financial Institutions Act herein after referred to as the "principal Act".

Amendment of
long title

63. The principal Act is amended in the long title by deleting the words “activities of credit co-operative societies and schemes.

Amendment of
section 2

64. The principal Act is amended in section 2 by deleting sub sections (4), (5) and (6).

(b) Sub Part II

AMENDMENT OF BANK OF TANZANIA ACT
(CAP.197)

Construction
Cap 197

65. This sub part shall be read as one with the Bank of Tanzania Act herein after referred to as the "principal Act".

Amendment of
section 5

66. The principal Act is amended in section 5, by adding at the end of subsection (1) the following words:
“and to regulate and supervise microfinance business.”

*(c) Sub Part III*AMENDMENT OF THE COOPERATIVE SOCIETIES ACT
(CAP.211)Construction
Cap 211

67. This sub part shall be read as one with the Cooperative Societies Act herein after referred to as the "principal Act".

Amendment of
section 141

68. The principal Act is amended in section 141 by deleting subsection (3).

Passed by the National Assembly on the 16th November, 2018.

STEPHEN KAGHAIGAI
Clerk of the National Assembly